

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209491.2; B-209492.2 **DATE:** October 4, 1983

MATTER OF: S.A.F.E. Export Corporation--Request
for Reconsideration

DIGEST:

Prior decision is affirmed where request for reconsideration fails to raise new issues of fact or to demonstrate that errors of law exist in that prior decision.

S.A.F.E. Export Corporation requests reconsideration of our decision, S.A.F.E. Export Corporation, B-209491; B-209492, August 2, 1983, 83-2 CPD. In that decision, we held that contracting officers had properly determined the firm to be nonresponsible under requests for proposals (RFP) Nos. DAJA76-82-R-0370 (0370) and DAJA76-82-R-0953 (0953) issued by the United States Army Contracting Agency, Europe.

Our Office will not reverse or modify our original decision unless a protester's request for reconsideration raises new issues of fact or demonstrates that errors of law exist in that decision. Showcase Corporation--Reconsideration, B-205903.3, December 7, 1982, 82-2 CPD 508. S.A.F.E. has failed to meet its burden here and we affirm our prior decision.

Regarding RFP-0370, the arguments S.A.F.E. now raises were considered during the course of its initial protest and we will not consider them again. See S.A.F.E. Export Corporation--Request for Reconsideration, B-208744.2, July 14, 1983, 83-2 CPD 90. Regarding RFP-0953, S.A.F.E. now alleges that the contracting officer's determination of the firm's nonresponsibility was unreasonable and tantamount to bad faith, because that same contracting officer had found S.A.F.E. responsible under an earlier procurement despite the presence of the same history of contract default terminations that served as the basis for his determination of nonresponsibility under RFP-0953. We do not agree.

A contracting officer's original determination regarding a firm's responsibility does not bind him to the same conclusion for all subsequent procurements. As we pointed out to S.A.F.E. in our original decision, and re-emphasize here, contracting officers can reach opposite conclusions on

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the same facts without either determination being unreasonable or the result of bad faith. GAVCO Corporation--Request for Reconsideration, B-207846.2, September 20, 1982, 82-2 CPD 242. Therefore, the fact that the contracting officer may have made an earlier affirmative determination of S.A.F.E.'s responsibility for a different procurement is immaterial and will not alter our conclusion that S.A.F.E.'s record of prior defaults provided the same contracting officer with sufficient justification to determine the firm nonresponsible under RFP-0953. We affirm our decision of August 2.

S.A.F.E. also asserts that the contracting officers for both procurements acted improperly by not referring their determinations of nonresponsibility to the Small Business Administration (SBA) under the Certificate of Competency procedure. SBA's authority to determine a small business bidder's responsibility does not extend to procurements that will be performed entirely outside any state, territory, or possession of the United States. See Defense Acquisition Regulation § 1-700 (DAC 76-19, July 27, 1979). In this case, the contracts were to be performed at U. S. military installations in the Federal Republic of Germany.

Our decision is affirmed.

Milton J. Aorolan
for Comptroller General
of the United States